Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- versus -

NOEL ZAPANTA y LUCAS,
Accused-Appellant.

G.R. No. 230227

Present:

LEONEN, *J.*, *Chairperson*,
GESMUNDO,*
CARANDANG,
LAZARO-JAVIER,** and
ZALAMEDA, *JJ.*

Promulgated:

November 6, 2019
MisLDCBatt

x---x

D E C I S I O N

ZALAMEDA, *J.*:

This is an appeal[1] seeking to reverse and set aside the Decision[2] dated 29 September 2016 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07228 which affirmed the Consolidated Decision[3] dated 08 September 2014 rendered by Branch 71, Regional Trial Court (RTC) of Antipolo City, in Criminal Case Nos. 06-32149 and 06-32150, finding Noel Zapanta y Lucas (accused-appellant) guilty beyond reasonable doubt of violations of Sections 5 and 11, both under Article II of Republic Act (RA) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

---

* On leave.

** Designated as additional Member of the Third Division per Special Order No. 2728.

[1] See Notice of Appeal dated October 21, 2016; *rollo*, pp. 18-19.

[2] *Id.* at 2-17; penned by Associate Justice Stephen C. Cruz with Associate Justices Jose C. Reyes and Ramon Paul L. Hernando (now both members of this Court), concurring.

[3] CA *rollo*, pp. 50-55; penned by Judge Kevin Narce B. Vivero.

Antecedents

Accused-appellant was charged for the subject offenses, in two separate Informations, the accusatory portions of which state:

Criminal Case No. 06-32149

> That, on or about the 9th day of July 2006 in the Municipality of Taytay, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver or give away to another **0.06** gram of white crystalline substance contained in one (1) heat-sealed transaparent plastic sachet, which substance was found positive to the test for Methamphetamine Hydrochloride, commonly known as "Shabu", a dangerous drug, in consideration of the amount of Php100.00, in violation of the above-cited law.
>
> **CONTRARY TO LAW.**[4]

Criminal Case No. 06-32150

> That, on or about the 9th day of July 2006 in the Municipality of Taytay, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control **0.03** gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet and which was found positive to the test for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.
>
> **CONTRARY TO LAW.**[5]

On separate arraignments, accused-appellant pleaded not guilty to each of the charges. After pre-trial, trial ensued.

---

4 Records, Criminal Case No. 06-32149, p.1.
5 Records, Criminal Case No. 06-32150, p.1.

Version of the Prosecution

On the afternoon of 09 July 2006, the Taytay police station formed a team to conduct a buy-bust operation against one "Noel Bungo," later identified as accused-appellant. Together with the civilian asset, a member of the buy-bust team, acting as poseur-buyer, went to accused-appellant's house while the rest of the team strategically positioned themselves nearby. Accused-appellant asked the asset if they were buying, and upon positive confirmation, took out one (1) plastic sachet with suspected *shabu* and gave it to the poseur-buyer. In exchange, the buy-bust money was handed over to accused-appellant. Afterwards, the poseur-buyer executed the pre-arranged signal which eventually led to accused-appellant's arrest. The arresting officers recovered from the accused-appellant a plastic sachet with suspected *shabu* inside a coin purse and the buy-bust money.

The buy-bust team went to the police station where the officer of the case marked the seized items. The request for laboratory examination, together with the sachets containing suspected *shabu,* were forwarded to the Eastern Police District Laboratory for qualitative examination. Per Laboratory Report, the specimens were found positive for methamphetamine hydrochloride, or *shabu.*

Version of the Defense

Accused-appellant denied the charges against him. He claimed that on the afternoon of 09 July 2006, while he and his wife were outside their house looking after the fighting cocks owned by one Larry Zapanta, two (2) men approached and asked them on the whereabouts of a certain *"Lanlan."* When he told them he did not know the person, the men entered his house, along with several others who identified themselves as police officers. Apparently, the men started searching the place, but when they found nothing, they boarded accused-appellant in a tricycle and instructed him to call his sister to ask for money or else they would file a case against him. When his sister failed to produce the money, he was brought to the police station.

Ruling of the RTC

In its consolidated decision, the RTC found accused-appellant guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165, sentencing him to suffer the penalty of life imprisonment plus a fine of ₱500,000.00.[6] It likewise found him guilty of violating Section 11, Article II of the same law and accordingly sentenced him to suffer the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years with a fine of ₱300,000.00.[7]

The RTC held that the prosecution sufficiently established all the elements of illegal sale of dangerous drugs. The lone testimony of the prosecution witness established a complete picture detailing the buy-bust operation from the initial contact between the poseur-buyer and the seller, the offer to purchase, the promise or payment of the consideration until the consummation of sale by the delivery of the illegal drug subject of sale. The RTC also held that the prosecution satisfactorily proved that accused-appellant illegally possessed one (1) sachet of shabu, ratiocinating that mere possession of a regulated drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi,* sufficient to convict accused-appellant. The RTC gave weight to the positive declaration of the police officer who appeared to be credible, as opposed to the claim of accused-appellant that the buy-bust operation was merely fabricated. Likewise, the RTC applied the presumption that the police officers performed their duties in a regular manner.[8]

Aggrieved, accused-appellant appealed to the CA.

Ruling of the CA

In the assailed decision, the CA affirmed accused-appellant's conviction. The CA ruled that the prosecution established through testimonial evidence the elements of illegal sale of dangerous drugs. The subsequent confiscation of another sachet with suspected *shabu* from accused-appellant's possession sans any authority to possess the same, likewise made him liable for illegal possession.

---

6 CA *rollo*, p. 55.
7 *Id.*
8 *Id.* at 54.

The CA also held that the prosecution was able to establish the links in the chain of custody despite some procedural lapses. To the CA, the totality of the testimonial, documentary, and object evidence not only adequately supported the findings that accused-appellant sold dangerous drugs and was in possession thereof; it also accounted for the unbroken chain of custody of the seized evidence as well.

Finally, the CA did not give credence to accused-appellant's defense of denial and frame-up. It declared that accused-appellant failed to overthrow the presumption of regularity accorded to the official acts of the prosecution witnesses and maintained accused-appellant's conviction.[9]

Hence, this appeal.

Issue

The sole issue in this case is whether the CA correctly found accused-appellant guilty beyond reasonable doubt of illegal sale and illegal possession of dangerous drugs under RA 9165.

In his Supplemental Brief,[10] accused-appellant noted substantial gaps in the chain of custody as follows: first, the drugs seized from accused-appellant were not immediately marked; second, the police officers failed to conduct an inventory and take photographs of the drugs seized; third, the prosecution failed to present all persons who purportedly had custody of the drugs seized; and finally, there was no testimony as to the post-chemical examination. According to accused-appellant, said gaps raised doubt on the authenticity of the evidence presented in court, warranting his acquittal. Moreover, his defense that the police officers who arrested him were engaged in the *modus "hulidap gang"* had been sufficiently proven.

Ruling of the Court

The appeal is meritorious.

---

[9] Rollo, pp. 7-17.
[10] *Id.* at 32-47.

Prefatorily, an appeal in criminal cases leaves the whole case open for review, and the appellate court has the duty to correct, cite, and appreciate errors in the appealed judgment, assigned or unassigned.[11]

In this case, accused-appellant was charged with the offenses of illegal sale and illegal possession of dangerous drugs, defined and penalized under Sections 5 and 11, Article II of RA 9165. In order to secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must establish the following elements: (a) the identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and the payment. Similarly, the prosecution must establish the following elements to convict an accused with illegal possession of dangerous drugs: (a) that accused was in possession of an item or object identified as dangerous drugs; (b) such possession was not authorized by law and (c) the accused freely and consciously possessed the said drug.[12] Jurisprudence teaches that in these cases, it is essential that the identity of the seized drug be established with moral certainty. In order to obviate any unnecessary doubts on such identity, the prosecution has to show an unbroken chain of custody over the same.[13]

Under Section 21 of RA 9165 and its Implementing Rules and Regulations (IRR),[14] the apprehending officers are required, immediately after seizure, to physically inventory and photograph the confiscated items in the presence of the accused, or his/her representative or counsel, a representative from the media and the DOJ, and any elected public official, who are required to sign the copy of the inventory and be given a copy thereof. In this case, there are glaring deficiencies which are not in accord with the rule set out under the law.

There was non-compliance with Sec. 21, Art. II, RA 9165

Herein, there was no showing that a physical inventory and photograph-taking of the seized items were conducted:

---

[11] *Santos v. People,* G.R. No. 232950, 13 August 2018.
[12] *People v. Ching,* G.R. No. 223556, 09 October 2017.
[13] *Id.*
[14] The subject offenses in this case were committed in 2006, or prior to the amendment introduced by RA 10640 which became effective only on 23 July 2014. Hence, the rules provided under Sec. 21 of RA 9165 and its IRR shall apply.

[ATTY. TOLENTINO]:

Q: After you recovered these items from the accused did you prepare a receipt of the things seized from the accused?

[PO1 CADAG]:

A: No.

Q: Did you take photographs of these items taken from the accused right there at the target area?

A: No.[15]

In fact, there was neither receipt of inventory nor photograph of the seized items offered as evidence by the prosecution. There was also no showing that the presence of a representative from the media, the DOJ and any elected public official was secured to witness the conduct of the inventory. The mere marking of the seized drugs, unsupported by a physical inventory and taking of photographs, and in the absence of the necessary personalities under the law, fails to approximate compliance with the mandatory procedure under Sec. 21 of RA 9165.[16]

The links in the chain of custody were not properly established by the prosecution

In *People v. Dahil*,[17] the Court had laid down the links that must be established in the chain of custody of the confiscated item in a buy-bust operation, thus: *"first,* the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second,* the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third,* the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth,* the turnover and submission of the marked illegal drug seized by the forensic chemist to the court."[18] The chain of custody rule requires the testimony for every link in the chain, describing how and from whom the

---

[15] TSN, 28 July 2008, p. 47.
[16] *Santos v. People,* G.R. No. 232950, 13 August 2018.
[17] G.R. No. 212196, 12 January 2015, 745 SCRA 221.
[18] *Id.* at 231.

explanation was offered for the non-observance of the rule. The prosecution could not also apply the saving mechanism of Section 21 of the IRR of RA 9165 because it miserably failed to prove that the integrity and the evidentiary value of the seized items were preserved. Accordingly, the accused were acquitted. The Court also declared that any doubt existing on the integrity and evidentiary value of the confiscated items due to the non-compliance with the rules under RA 9165 warrants a reversal of the conviction of the accused.[26]

Law enforcers should not trifle with the legal requirement to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused,[27] as in this case. Given the procedural lapses, serious uncertainty hangs over the identity of the seized drugs the prosecution presented as evidence before the Court. In effect, the prosecution failed to fully prove the elements of the crimes charged, creating reasonable doubt on the criminal liability of accused-appellant.[28] Under the circumstances, there is no recourse but to acquit him.

WHEREFORE, the appeal is hereby **GRANTED**. The Decision dated 29 September 2016 of the CA in CA-G.R. CR-H.C. No. 07228 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **NOEL ZAPANTA y LUCAS** is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless detained for any other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

RODIL V. ZALAMEDA
Associate Justice

---

[26] *People v. Viterbo*, G.R. No. 203434, 23 July 2014, 730 SCRA 672.
[27] *People v. Holgado*, G.R. No. 207992, 11 August 2014, 732 SCRA 554.
[28] Supra at note 22.

WE CONCUR:

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

(On Leave)

ALEXANDER G. GESMUNDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

(On official leave)

AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

I attest that the conclusion in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

MisDCBatt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division
FEB 18 2020